REMARKS

Claims 1 – 6 and 8 – 14 are in the application. Claims 1, 10, 12, and 14 are currently amended; claims 4 and 11 were previously presented; claim 7 is canceled; and claims 2, 3, 5, 6, 8, 9, and 13 remain unchanged from the original versions thereof. Claims 1, 10, 12, and 14 are the independent claims herein.

No new matter has been added to the application. Amendments to claims 1, 10, 12, and 14 are supported by the Specification, as detailed on page 9, paragraph 2 – page 17, paragraph 1. Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 103

Claims 1 – 9 and 12 – 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Statement of Financial Accounting Standards No. 133, accounting for derivative instruments and hedging activities by Edmund L. Jenkins (hereinafter, Jenkins Nov, 1998. Vol. 186, Iss. 5; 12 pages) in view of Wallman, U.S. Patent No. 6,360,210. This rejection is respectfully traversed.

Applicant respectfully submits that the rejection of claim 1 is not obvious under 35 USC in view of Jenkins and Wallman as a matter of fact since the cited and relied upon references fail to disclose or suggest that which they are cited and relied upon for disclosing/suggesting, let alone that which is claimed by Applicant.

Applicant notes that the Office cites and relies upon Jenkins for disclosing "a hedge accounting method implemented by a programmed computer system for reducing periodic earnings volatility associated with a hedged exposure, the method comprising: processing data and instructions on the computer to account for a financial exposure of an associated hedging instrument by designating for accounting purposes a portion ("i.e., percentage") of the value of the financial exposure as being hedged by the

hedging instrument, (see page 9-12 of paragraph 18-22) the designated portion being based on a delta ("i.e., relationship between option price and underlying futures contract or stock price") of the hedging instrument representing a price sensitivity of the financial exposure with respect to changes in market value ("i.e., fair value") of an underlying instrument (see page 9-12 of paragraph 18-22); and in each of a plurality of sequential periods ("i.e., future periods "see page 16 paragraph 31") and for accounting purposes of the portion of the financial exposure being hedged by the hedging instrument based the delta of the hedging instrument, to reduce periodic earnings volatility associated with a hedging transaction."

Regarding the disclosure of Jenkins, Applicant notes that paragraph 31 thereof states,

> 31. Amounts in accumulated other comprehensive income shall be reclassified into earnings in the same period or periods during which the hedged forecasted transaction affects earnings (for example, when a forecasted sale actually occurs). If the hedged transaction results in the acquisition of an asset or the incurrence of a liability, the gains and losses in accumulated other comprehensive income shall be reclassified into earnings in the same period or periods during which the asset acquired or liability incurred affects earnings (such as in the periods that depreciation expense, interest expense, or cost of sales is recognized). However, <u>if an entity expects at any time that continued reporting of a loss in accumulated other comprehensive income would lead to recognizing a net loss on the combination of the hedging instrument and the hedged transaction (and related asset acquired or liability incurred) in one or more future periods, a loss shall be reclassified immediately into earnings for the amount that is not expected to be recovered.</u> For example, a loss shall be reported in earnings for a derivative that is designated as hedging the forecasted purchase of inventory to the extent that the cost basis of the inventory plus the related amount reported in accumulated other comprehensive income exceeds the amount expected to be recovered through sales of that inventory. (Impairment guidance is provided in paragraphs 34 and 35.) (emphasis added)

Thus, it is clear that the "future periods" cited and relied upon by the Office specifically refers to a requirement for accounting for *amounts in accumulated other comprehensive income* in the instance that an entity expects at any time that continued reporting of a loss in accumulated other comprehensive income would lead to

recognizing a net loss on the combination of the hedging instrument and the hedged transaction (and related asset acquired or liability incurred) in one or more future periods. Specifically, Jenkins states that in the instance the entity expects at any time that continued reporting of a loss in accumulated other comprehensive income would lead to recognizing a net loss on the combination of the hedging instrument and the hedged transaction (and related asset acquired or liability incurred) in one or more future periods, then the loss is to be reclassified immediately into earnings for the amount that is not expected to be recovered.

Thus, it is clear that the cited and relied upon "future periods" specifically relates to the reclassification of accumulated other comprehensive income. However, the claimed plurality of sequential periods relate to a dynamic re-designation for accounting purposes of the portion of the financial exposure being hedged by the hedging instrument based on a change to the delta of the hedging instrument. Factually, the accumulated other comprehensive income of Jenkins is not the same as or even suggestive of the claimed "portion of the financial exposure being hedged by the hedging instrument based on a change to the delta of the hedging instrument". Accordingly, the cited "future periods" of Jenkins relate to different aspects of hedge accounting and are not applicable to Applicant's claims.

Furthermore, Jenkins, paragraph 31, requires an entity to take immediate action (i.e., immediately reclassify an anticipated or expected loss into earnings for the amount that is not expected to be recovered) for a future expected outcome. Applicant however claims re-designating, in each of the subsequent periods, the portion of the financial exposure being hedged by the hedging instrument based on a change to the delta of the hedging instrument. That is, Applicant claims performing an action in future periods whereas Jenkins requires immediate action based on expected results in future periods.

Applicant notes that while the Office admits, "Jenkins fail[s] to explicitly teach re[-]designation", the Office also concludes that it would have been obvious to one of

ordinary skill in the art that the re-designation would have been repeating the designation process of Jenkins.

Applicant respectfully submits that the Office has not provided or otherwise expressed an reasoning of how and why Applicant's claimed re-designation would have been obvious in light of the fact that Jenkins specifically and exclusively discloses a designation process solely "at inception". (See Jenkins, paragraph 20. a., page 10) Jenkins also states,

> Under this Statement, an entity that elects to apply hedge accounting is required to establish at the inception of the hedge the method it will use for assessing the effectiveness of the hedging derivative and the measurement approach for determining the ineffective aspect of the hedge. Those methods must be consistent with the entity's approach to managing risk. (emphasis added) (Jenkins, page 2)

Therefore, it is clear that Jenkins specifically and exclusively discloses a method for establishing the effectiveness of the hedging instrument, including the designation thereof, at the inception of the hedge.

Applicant further submits that Jenkins fails to disclose or even suggest the additional claimed aspects of: comparing the change in the value of the designated exposure in each one of the periods to the change in value of the hedging instrument during corresponding ones of the periods; accounting for the change in value of the hedging instrument as other comprehensive income in the instance the change in value of the hedging instrument is less than the change in the value of the designated exposure in each one of the compared periods; and accounting for the change in value of the hedging instrument in excess of the change in value of the hedging instrument as earnings in the instance the change in value of the hedging instrument is greater than the change in the value of the designated exposure in each of the compared periods. (See claim 1)

Regarding the alleged disclosure of Wallman, Applicant respectfully submits that the cited and relied upon "dynamic processing of data on the computer" of Wallman

(FOA, page 3, paragraph 3) does not disclose or even suggest the claimed dynamic re-designation, for accounting purposes, of the portion of the financial exposure being hedged by the hedging instrument based on changes to the delta of the hedging instrument, to reduce periodic earnings volatility associated with a hedging transaction. Applicant respectfully submits that Wallman, at most, discloses using a processor to determine a desired level of market risk protection for a portfolio. Applicant respectfully submits that Wallman des not even relate to a designation or more relevantly to a re-designation of the portion of the financial exposure being hedged by the hedging instrument based on changes to the delta of the hedging instrument, to reduce periodic earnings volatility associated with a hedging transaction, dynamic or otherwise. Instead, Wallman relates to limiting a market risk of a portfolio against a catastrophic loss in value. (Wallman, col. 6, ln. 9 – 52) The alleged *dynamic processing* of Wallman is not the same as or suggestive of the claimed “dynamic re-designation”.

Applicant respectfully submits that the asserted combination of Jenkins and Wallman fails to overcome the insufficient disclosure of Jenkins. That is, even if Jenkins were combined with Wallman as asserted by the Office Action (not admitted as feasible by Applicant), the combination fails to render the claim 1 obvious under 35 USC 103(a) for at least the reasons discussed in detail above. Again, Jenkins fails to disclose or suggest that for which it is cited and relied upon for disclosing and there is no support for the obviousness conclusions argued in the Office Action.

Claims 2 – 6, 8, and 9 depend from claim 1. The Office Action rejected claims 12 – 14 on the same basis and rationale provided regarding claim 1. Claims 10, 12, and 14 are, in relevant part, similar to claim 1. Accordingly, Applicant respectfully submits that claims 1 – 6, 8, 9, and 12 – 14 are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a).

Claims 10 and 11 were also rejected as being unpatentable over Jenkins in view of Wallman. This rejection is traversed.

Applicant respectfully submits that claims 10 and 11 are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a) for at least reasons similar to those provided regarding claim 1.

Thus, it is clear that the reasoning provided by Applicant hereinabove regarding claim 1 is applicable and sufficient to rebut the rejection of claims 10 and 11. Accordingly, Applicant respectfully submits that claims 10 and 11are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a).

C O N C L U S I O N

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

May 1, 2008
Date

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